

United States Department of the Interior

U.S. Fish and Wildlife Service
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In reply Refer To:
AESO/FA

September 20, 2001

Colonel John P. Carroll
District Engineer
Los Angeles District, Corps of Engineers
P.O. Box 532711
Los Angeles, CA 90053-2325

Dear Colonel Carroll:

On August 20, 2001, we received the Los Angeles District's (LAD) recent Special Public Notice (SPN) regarding Nationwide Permit (NWP) Reissuance Request For Comments. The SPN was intended to inform the public of the opportunity to comment on the Corps' national proposal to reissue and modify NWPs, printed in the Federal Register on August 9, 2001, and to solicit comments on regional conditions specific to the LAD. We have reviewed the Federal Register notice and provided comments to our Regional Office. We offer the following comments regarding the proposed regional conditions in the State of Arizona.

We have noted that the regional conditions presented in the SPN are similar in scope to those presented in Public Notice 98-50449-BAH on April 21, 2000, which we commented on in a letter dated May 11, 2000. Our primary concern continues to be that the regional conditions proposed in the SPN will not be adequate to ensure minimal individual and/or cumulative adverse effects on the environment because your agency applies a scope of impact analysis that is narrowly confined to areas below the jurisdictional ordinary high water mark or delineated wetland boundary.

We continue to be concerned with the impact of the NWP program on Arizona's natural resources including, but not limited to, threatened and endangered species, designated critical habitat, wetlands, cottonwood/willow gallery forests, ironwood forests, and the Sonoran desert environment. We believe that cooperatively crafted regional conditions could significantly improve the protection of Arizona's natural resources. However, based on past permit actions, we foresee significant differences of opinions between our agencies regarding these issues.

The SPN does not provide any discussion relative to standard local operating procedures for endangered species (SLOPES). We suggest that developing and agreeing to SLOPES between our respective agencies would significantly improve coordination and resource conservation

objectives. To date, very little coordination between the Corps and Service regarding the development of SLOPES for Arizona has occurred. Please be aware that we are interested in cooperatively developing SLOPES as well as watershed, stream, and species specific regional conditions for Arizona.

As indicated above, we have had a long standing disagreement regarding the scope of impact analysis for Section 404 permitted activities and associated individual and cumulative effects. Until these issues are adequately resolved, we do not believe the development of watershed, stream, or species specific regional conditions or SLOPES will be adequate to protect the sensitive ecosystems and species of Arizona. To be effective, these processes must also address the issue of impact analysis. We realize that resolution of this issue may not be an immediately attainable goal. Therefore, until this issue is resolved and we are able to cooperatively craft adequate regional conditions, we again request interim adoption of the following regional condition for the NWP program in the LAD.

In the State of Arizona, for all activities requiring notification to the District Engineer (DE), the DE will, upon receipt of notification, provide immediately (e.g., via facsimile transmission, overnight mail, or other expeditious manner), a copy to the Arizona Ecological Services Field Office of the U.S. Fish and Wildlife Service and other appropriate resource agencies. Consistent with General Condition 13, these agencies will then have 10 calendar days from the date the material is transmitted to telephone or fax the DE notice that they intend to provide substantive, site-specific comments. If so contacted by an agency, the DE will wait an additional 15 calendar days before making a decision on the notification.

We believe interim adoption of this regional condition is necessary to ensure that we are provided the proper opportunity to inform the DE of instances when we believe an activity to be authorized by a NWP would have more than individual and/or cumulative adverse effects on the environment or adversely affect threatened and endangered species or designated critical habitat. If you have any questions or concerns, please contact Don Metz (x217) or Mike Martinez (x224) of this office.

Sincerely,

/s/ David L. Harlow
Field Supervisor

cc: Regional Director, Fish and Wildlife Service, Albuquerque, NM (ARD-ES)
Chief, Division of Endangered Species, Arlington, VA (Attn: Mike Horton)
Chief, Regulatory Branch, U.S. Army Corps of Engineers, Phoenix, AZ
Regional Administrator, Environmental Protection Agency, San Francisco, CA
Supervisor, Project Evaluation Program, Arizona Game and Fish Department, Phoenix, AZ
401/404 Permit Certification, Arizona Department of Environmental Quality, Phoenix, AZ

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